LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
MAR 10 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 994

HYDRO-LINE MANUFACTURING CO.,
Petitioner,

vs.

FLICK-REEDY CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JAMES C. WOOD,
LLOYD W. MASON,
20 North Wacker Drive,
Chicago, Illinois 60606,
Attorneys for Respondent.

HOFGREN, WEGNER, ALLEN,
STELLMAN & MCCORD,
20 North Wacker Drive,
Chicago, Illinois 60606.

THE BURTHORP-WARREN PRINTING COMPANY, CHICAGO

SUBJECT INDEX.

	PAGE
Jurisdiction	1
Questions Presented	1
Question 1 in the Petition	2
Question 2 in the Petition	4
Conclusion	5

CITATIONS.

Sampson & Murdock Co. v. Seaver-Radford Co., 140 Fed. 539 (C. A. 1, 1905)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 994

HYDRO-LINE MANUFACTURING CO.,
Petitioner,

vs.

FLICK-REEDY CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

JURISDICTION.

The jurisdictional requisites are adequately presented in the Petition.

QUESTIONS PRESENTED.

The questions presented in the Petition for a Writ of Certiorari each presupposes an effect of the decision by the Court of Appeals for the Seventh Circuit which the decision will not bring about. As to the copyright issue, the question presupposes erroneously that the decision gives respondent a patent-like monopoly on the ideas expressed.

As to patent No. 2,798,777 the question presupposes erroneously that the patentee's conduct in the Patent Office was other than proper.

Question 1 in the Petition.

Petitioner's presentation as to the copyright is an argument on the factual determinations of the Lower Courts. The Trial Court made a finding that petitioner's copyrighted work was an adaptation, enlargement and revised version of earlier works, specifically that:

> "59. Pages 20 and 22 of plaintiff's 1958 bulletin JH—104N are adaptations, enlargements or revised versions of the prior 1947 and 1948 publications of Miller Motor Company, the 1953 'Applied Hydraulics' Article and the 1951 File 1182 (Tr. 259, 261, 297)." (App. 696.)

Respondent's position on appeal was that the District Court failed to apply the law correctly that *"adaptations, enlargements or revised versions"* of prior writings properly are the subject of valid copyright. The written material on pages 20 and 22 of respondent's copyrighted book (Pltf's. Exh. 12) is original and not found in any of the prior publications. The written material was new matter, original with plaintiff and in that respect represented new works.

The Trial Court's finding 59 is correct in that the copyrighted book, pages 20 and 22, was *different* from what was published before.

Petitioner's access to respondent's book was admitted (answers to requests for admissions Nos. 1-3, Pltf's. Exh. 18). Petitioner sent a copy of respondent's copyrighted book to its own advertising agency for the purpose of obtaining the infringing printed book (answers to requests for admissions Nos. 4-6, Pltf's. Exh. 18).

Comparison charts of petitioner's and respondent's pages show that the pages have the same layout and presentation although the text copied was rearranged in sequence and some parts paraphrased (Pltf's. Exhs. 45 and 54).

With the foregoing factual background the Court of Appeals reversed the Trial Court as to its finding on the validity of the copyright and decided the question of infringement on the factual basis of whether petitioner's arrangement and expression was its own or whether it had been taken from respondent's copyrighted material. Possession of respondent's copyrighted material was admitted so that the element of access was proved. The comparison of the pages supplied the element of copying so that infringement was found.

Petitioner's argument on the reasons for granting the writ relative to the copyright issue erroneously assumes that there is no other way to express the engineering information contained in respondent's copyrighted book. The evidence before the Courts below shows clearly that the information was presented in prior publications in a much different fashion. Petitioner's argument goes to the facts of the controversy and presents no compelling reason why the Petition for a Writ of Certiorari should be granted.

The Court of Appeals applied the well known of legal precedent *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 140 Fed. 539 (C. A. 1, 1905) to Petitioner's appropriation of respondent's labor. There is no new or unique issue of law presented by Petitioner.

Question 2 in the Petition.

Petitioner's stated reason upon which this Court is asked to grant the Petition for Writ of Certiorari as to the issues raised relative to the infringement of patent No. 2,798,777 relate only to an omission by the patentee to call the Patent Office's attention to a prior cylinder mount designated A71. Such prior cylinder mounts do not embody the patented structure. Further such prior mounts were shown in prior patents, specifically in Craig patent No. 1,820,269 and Christensen patent No. 2,410,808, both cited by the Patent Office during the prosecution of the patent in suit (Book 2 of Exh. re copyright and Patent No. 2,798,777).

Under the circumstances there was no legal consequence to the patentee's omission to call their own version of the prior patents' disclosures to the attention of the Patent Office.

On page 15 of the Petition, the quotation of testimony attributed to Mr. Flick from Defendant's Exhibit 119a, page 275, is incomplete as presented. The testimony concerns entirely different types of cylinder mountings (Pltf's. Exh. 1, page 2, Book 2 of Exhibits).

The reference on page 15 in the Petition to defendant's request for admission, No. 43, is likewise presented in incomplete form. The balance of the request for admission points out that the prior A71 mount had clearances in the holes in one leg of the mount permitting the head of the cylinder to rise out of contact with the supporting base. For this reason, among others, the prior mount did not anticipate the patent in suit.

Petitioner's presentation of Question No. 2 is solely an argument of the factual conclusions to be drawn from the evidence. The Courts below have examined the evidence and held against the contentions of the petitioner. No legal question is actually presented.

CONCLUSION.

The Court of Appeals for the Seventh Circuit has carefully considered the evidence of petitioner's access to and copying from respondent's copyrighted book. The copyright has been held valid on the factual finding No. 59 made by the Trial Court. Being valid, the evidence clearly supports the finding of infringement. Petitioner presents only an argument on the factual matters decided by the Courts below.

The Petition raises no matter relative to patent No. 2,798,777 which should compel this Court to grant a Writ of Certiorari. This Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES C. WOOD,
LLOYD W. MASON,
Counsel for Respondent.

HOFGREN, WEGNER, ALLEN,
STELLMAN & MCCORD,
20 North Wacker Drive,
Chicago, Illinois 60606,
Attorneys for Respondent.

March 9, 1966.